

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT

Appellant/Cross-Respondent,

vs.

LAS VEGAS REVIEW-JOURNAL,
Respondent/Cross-Appellant,

And

AMERICAN BROADCASTING
COMPANIES, INC.; THE ASSOCIATED PRESS;
CABLE NEWS NETWORK, INC.; CHESAPEAKE
MEDIA I, LLC, D/B/A KSNT-TV; LOS ANGELES
TIMES COMMUNICATIONS, LLC; THE NEW YORK
TIMES COMPANY; SCRIPPS BROADCASTING
HOLDINGS, LLC; WP COMPANY, LLC, D/B/A THE
WASHINGTON POST,

Respondents.

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CASE NO.: 75518

RESPONDENT/CROSS-APPELLANT LAS VEGAS REVIEW-JOURNAL'S
REPLY BRIEF ON CROSS-APPEAL

Appeal from Eighth Judicial District Court, Clark County
The Honorable Stephanie Miley, District Judge
District Court Case Nos. A764030; A764169

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I. INTRODUCTION

After the October 1, 2017, shooting at the Route 91 Harvest Music Festival, the Las Vegas Review-Journal (“Review-Journal”) submitted public records requests to the Las Vegas Metropolitan Police Department (“Metro”) seeking records that would help the public understand the tragic events of that night. Rather than timely provide the requested records or a sufficient explanation of why the records were confidential, Metro ignored the Review-Journal’s requests or withheld the records with virtually no explanation in violation of the Nevada Public Records Act, NRS 239.001, *et seq.* (the “NPRA”).

After the Review-Journal and several other media entities¹ (collectively, the “Media Litigants”) filed petitions with the district court pursuant to the NPRA, the district court entered two orders directing Metro to produce the records to the Media Litigants and outlining specific requirements for when and how the records must be produced and limiting the costs Metro could charge for production.

Although the district court’s orders correctly interpret the NPRA in many respects, the district court got some things wrong. First, in its March 2, 2018, order (the “Disclosure Order”), the district court erred by finding that Metro did not waive its right to assert privileges. NRS 239.0107(1)(d) specifically prescribes when and

¹ (The “Media Coalition”)

how a governmental entity “shall” respond to public records requests. Metro asserts that the NPRA does not specifically provide waiver as a remedy (Reply Brief and Answering Brief on Cross-Appeal (“RB/AB”), pp. 43-44), but the absence of a specific waiver provision in the law does not prevent a court from finding that a party’s actions resulted in a waiver. Metro’s arguments seek to negate the vast body of case law from this Court holding that statutes which outline specific time and manner requirements are mandatory and require strict compliance. *See, e.g., Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310 P.3d 569, 572 (2013). Moreover, none of the cases cited by Metro dealt with the specific waiver claim at issue in this cross-appeal, and thus do not foreclose a finding from this Court that Metro waived its ability to assert privileges.

Second, the district court erred when, in the Disclosure Order, it permitted Metro to redact information that is not confidential, including the names of witnesses and victims. To support the overbroad redactions permitted by the Disclosure Order, Metro invites the Court to misread NRS 239B.030—a statute that outlines what a government entity may be permitted to withhold from certain records—as mandatory when in fact it is not. Additionally, Metro asserts that the redaction of individual names is proper under the balancing test recently articulated by the Court in *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313 (2018) (“CCSD”) and inapposite FOIA case law, but fails to pass the first

hurdle of this balancing test: demonstrating that there is a nontrivial personal privacy interest in individual names.

Third, the district court erred in not requiring Metro to produce a privilege log identifying documents it is withholding or redacting. Metro asserts the Court should ignore the district court's error because it alleges the Review-Journal failed to argue at the district court that it was entitled to a redaction log. (RB/AB, pp. 54-55.) This argument, however, ignores the multiple instances in the record in which the Review-Journal specifically requested Metro provide a privilege log detailing redactions.

Fourth, the district court erred in issuing its March 9, 2018, order (the "Costs Order") regarding the permissible costs Metro may charge the Media for production of the requested records without first conducting an evidentiary hearing to assess whether Metro's claims about the costs of production are accurate. Metro also attempts to fend off a finding of error by asserting that the Review-Journal did not raise this issue below. (RB/AB, p. 54-55.) Yet again, however, Metro's waiver argument ignores that the Review-Journal did assert that an evidentiary hearing was necessary. Metro also ignores that NRS 34.220 specifically provides that a court presiding over a petition for a writ of mandamus—the procedural vehicle under which the Media Litigants brought suit—may conduct an evidentiary hearing on disputed factual issues. Despite Metro's reliance on the arguments it presented in a

supplemental brief on costs, neither the district court nor the Media Litigants have ever had an opportunity to determine whether Metro’s factual assertions about costs are accurate.

Finally, the district court erred in holding that dispatch logs are “geographical information services” as defined by NRS 239.054 because that statute is intended to allow governmental entities to request fees for providing electronic services and products—not printed materials such as dispatch logs.

II. ARGUMENT

A. THE DISTRICT COURT ERRED IN FINDING METRO DID NOT WAIVE ITS RIGHT TO ASSERT PRIVILEGES.

As discussed in the Review-Journal’s AB/OB,² Metro abjectly failed to comply with the NPRA’s specific, mandatory provisions regarding when and how a governmental entity must respond to a public records request. Because Metro did not respond to the Review-Journal’s requests in a timely or sufficient manner, Metro waived its ability to assert that any of the requested records were confidential. The district court’s holding to the contrary ignores the plain language of the NPRA and this Court’s case law, and thus must be reversed.

NRS 239.0107(1)(d) provides that if a governmental entity denies a records request because the record or a part thereof is confidential, it “shall” provide the

² (See AB/OB, pp. 57-60.)

requester notice of that fact in writing with citation to the specific statute or other legal authority that makes the public record or a part thereof confidential within five business days of receiving the request.

“The word ‘shall’ is generally regarded as mandatory.” *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013) (citation omitted). Thus, because NRS 239.0107(1)(d)’s response requirements are mandatory, it requires strict compliance. *See id.*, 129 Nev. at 664, 310 P.3d at 572 (“[A] rule is mandatory and requires strict compliance when its language states a specific ‘time and manner’ for performance”) (quotation omitted).

Metro cites a recent unpublished decision from this Court, claiming it supports Metro’s contention that the district court correctly determined it did not waive its right to assert privileges. (*See* RB/AB, p. 45 (citing *Katz v. Incline Village Gen. Improv. Dist.*, 414 P.3d 300, 2018 WL 1129140 (2018) (unpublished).) As a preliminary matter, *Katz* does not have precedential value. *See* NRAP 36(c)(2) (“An unpublished disposition, while publicly available, does not establish mandatory precedent except in a subsequent stage of a case in which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case.”)

Further, this Court’s cursory discussion in an unpublished opinion of an argument that the appellant records requester failed to support, does not equate to a

holding that noncompliance with NRS 239.0107(1)(d) can never lead to waiver. In *Katz*, the records requester appellant asserted that “a violation of NRS 239.0107(1)(d) automatically requires the governmental entity to turn over the otherwise confidential records.” *Katz*, 2018 WL 1129140 at *3. However, unlike here, the appellant “[did] not present any authority” to support this interpretation of NRS 239.0107(1)(d). *Id.* Thus, the records requester did not meet his burden on appeal and “failed to establish reversible error with respect to his request for a draft internal budget.” *Id.* Again, this is not the same as holding that a government entity is free to disobey the NPRA and always preserves its right to assert privileges when it fails to assert them in compliance with the NPRA. Moreover, as detailed in the Review-Journal’s brief in support of its amended petition (1AA136-38), its reply (2AA247-49), and the AB/OB filed with this Court (AB/OB, pp. 57-60), the Review-Journal has amply supported its argument that the mandates of NRS 239.0107 must be interpreted in a fashion that gives the provision meaning—and furthers the purpose of the NPRA.

Katz is additionally distinguishable because the appellant there did not even dispute that the withheld records were confidential. Rather, he asserted that a violation of NRS 239.0107(1)(d) required the automatic disclosure of otherwise confidential records. *Katz*, 2018 WL 1129140 at *3. Here, on the other hand, the parties disputed whether the requested records were confidential. *Katz* is therefore

of no moment here.

Metro's reliance on this Court's opinion in *Reno Newspapers v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011) (cited at RB/AB, pp. 45-46) also is misplaced. The *Gibbons* Court never addressed the issues of waiver or timeliness under NRS 239.0107(1)(d). There is no indication that the State's response to the records request in *Gibbons* was untimely. As the record in this case demonstrates, Metro's response was untimely because it did not respond to the Review-Journal's request within five business days as required under NRS 239.0107(1)(d). In addition, Metro did not respond at all to the Review-Journal's October 15, 2017 request for other records related to 1 October. (1AA91.)

It is also worth noting the State's responses to the records requests in *Gibbons* were noticeably more detailed than Metro's untimely responses in this case. As Metro notes, in *Gibbons*, the State denied a newspaper's request for e-mail communications sent over a six-month period between Governor Gibbons and ten individuals. *Gibbons*, 127 Nev. at 876, 266 P.3d at 625. In refusing the newspaper's request, the State asserted “all [the requested] emails are either privileged or are not considered public records” and “summarily listed” a number of cases, policies, and other documents. *Id.*, 127 Nev. at 885, 266 P.3d at 631. However, the State provided “no explanation whatsoever as to why the cases it cited actually supported its claim of confidentiality or were anything other than superfluous.” *Id.*

While the *Gibbons* case did not address waiver (as waiver was not at issue) the Court found “the State’s response was, in a word, deficient.” *Gibbons*, 127 Nev. at 884, 266 P.3d at 630. This is noteworthy because, compared to Metro’s response in this case, the State’s response in *Gibbons* was fulsome. (1AA113 (Metro cites only an “ongoing investigation” and *Donrey v. Bradshaw*, 106 Nev. 360, 798 P.2d 144 (1990) as the bases for refusing the Review-Journal’s 10/2/17 request for dispatch logs, 911 calls and other records).) Given the Metro’s lack of response in this case, it cannot rely on *Gibbons*. Thus, the *Gibbons* decision does not support Metro’s assertion that it preserved its ability to assert privileges or confidentiality justifying withholding the requested records.

There must be some penalty that attaches to a governmental entity’s failure to comply with NRS 239.0107(1)(d). The strict time and manner requirements are intended to facilitate the NPRA’s purpose of “further[ing] the democratic ideal of an accountable government by ensuring that public records are broadly accessible.” *Gibbons*, 127 Nev. 877–78, 266 P.3d at 626. Thus, this Court should strictly construe the time and manner requirements for governmental responses to records requests in NRS 239.0107(1)(d) to further this purpose, even under the extraordinary circumstances present in this case.

B. THE PERMISSIBLE REDACTIONS OUTLINED IN THE DISCLOSURE ORDER ARE OVERBROAD AND UNCLEAR.

The district court acknowledged that, under the NPRA and this Court’s

precedent, government records are presumptively public records and any restrictions to the public's right of access must be narrowly applied. (7AA1318.) However, the Disclosure Order nevertheless permits Metro to redact information that is not presumptively confidential:

IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include individual names (other than government officials), addresses, phone numbers, social security numbers, descriptors of individuals, and social media data for all individuals.

(7AA001321.) To support this overbroad list, Metro relies on a distorted interpretation of NRS 239B.030. It also inaccurately relies on this Court's decision in *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313 (2018) (“CCSD”) and inapposite FOIA cases to support the district court's overbroad redaction of the names of individuals. The test outlined in *Cameranesi* and adopted by this Court in *CCSD* is inapplicable to the individuals' names because Metro has not demonstrated that the individuals to whom the records at issue pertain have a nontrivial personal privacy interest in their names.

1. NRS 239B.030 is Permissive—Not Mandatory.

Unlike NRS 239.0107(1)(d), which mandates what a governmental entity “shall” do in refusing to fulfill a public records request, NRS 239B.030 outlines what a government entity may be permitted to withhold from certain records. “In construing statutes, ‘shall’ is presumptively mandatory and ‘*may*’ is *construed as permissive unless legislative intent demands another construction.*” *State v. Am.*

Bankers Ins. Co., 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990) (citation omitted; emphasis added); *accord Nevada Comm’n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 9–10, 866 P.2d 297, 302 (1994). (“It is a well-settled principle of statutory construction that statutes using the word “may” are generally directory and permissive in nature, while those that employ the term “shall” are presumptively mandatory.”)

Despite this straightforward principle of statutory construction, Metro insists NRS 239B.030 “unequivocally mandates that a government entity keep confidential any personal information contained within its records, unless such personal information is required to be included within the information.” (RB/AB, p. 48.) Additionally, Metro presents no evidence that the Legislature “demand[ed] another construction” of the word “may” for NRS 239B.030. Thus, this Court should decline Metro’s invitation to misinterpret the plain language of NRS 239B.030.

2. The New Privacy Test is Inapplicable to Individual Names.

In *CCSD*, the Court articulated the application of the NPRA framework to cases (unlike this one) that involve the assertion of a privacy interest. In *CCSD*, the Review-Journal submitted a records request to CCSD requesting, *inter alia*, public records pertaining to an internal investigation into the alleged misconduct of a CCSD school board trustee. After CCSD refused to produce the records, the Review-Journal petitioned the district court pursuant to NRS 239.011. *Clark Cty. Sch. Dist.*

v. Las Vegas Review-Journal, 134 Nev. Adv. Op. 84, 429 P.3d 313, 316 (2018). The district court granted the Review-Journal's petition and ordered CCSD to produce the records with only the names of direct victims of sexual harassment or alleged sexual harassment, students and support staff redacted. *Id.* at 316-17.

On appeal, CCSD argued in part that it should be allowed to redact more information. *Id.* at 317. The Court adopted a two-part balancing test set forth in *Cameranesi v. U.S. Dep't of Defense*, 856 F.3d 626 (9th Cir. 2017) to be applied by courts in cases "in which the nontrivial personal privacy interest of a person named in an investigative report may warrant redaction." A significant rationale cited by the Court in adopting this new balancing test was its recognition that Nevada law and its common law recognize the importance of protecting personal privacy interests. *CCSD*, 429 P.3d at 320 (discussing the common law tort of invasion of privacy for unreasonable intrusion upon the seclusion of another).

The balancing test only applies after the assertion of a legitimate privacy interest. As the Court explained:

The *Cameranesi* test is a two-part balancing test. It first requires the government to establish a "personal privacy interest stake to ensure that disclosure implicates a personal privacy interest that is nontrivial or ... more than [] de minimis." *Cameranesi*, 856 F.3d at 637. "Second, if the agency succeeds in showing that the privacy interest at stake is nontrivial, the requester 'must show that the public interest sought to be advanced is a significant one and that the information [sought] is likely to advance that interest.'" *Id.*

CCSD, 429 P.3d at 320. Moreover, in adopting the *Cameranesi* test, the Court explicitly held the test cohered with the NPRA and its case law interpreting the provision of the Act. *Id.* Under that precedent, a governmental entity bears the burden of establishing that its records are confidential. *Id.* (citing *Gibbons*, 127 Nev. at 878, 266 P.3d at 626 and Nev. Rev. Stat. § 239.0113).

The *Cameranesi* balancing test is inapplicable here because Metro has not established a nontrivial personal privacy interest in the names of witnesses or victims. The cases cited by Metro do not dictate a contrary conclusion. *New York Times Co. v. United States Dep't of Justice*, 235 F. Supp. 3d 522 (S.D.N.Y. 2017)³ is inapplicable because that case addressed whether Exemptions 6 and 7(C) of the Freedom of Information Act (“FOIA”) justified withholding personally identifying information of third parties including witnesses, investigation targets, covert and overt CIA personnel, foreign officials, and human sources in memoranda related to the Department of Justice’s investigation into whether certain interrogations and deaths of detainees in CIA custody violated federal law. *Id.* at 527.

Another FOIA case cited by Metro, *Fitzgibbon v. CIA*, 911 F.2d 755 (D.C. Cir. 1990),⁴ is likewise inapplicable because it concerned whether Exemption 7(C) justified withholding the names of individuals appearing in CIA documents

³ (RB/AB, p. 52.)

⁴ (*Id.*)

pertaining to an investigation of the disappearance (and presumed death) of a Basque exile and a critic of the Trujillo regime in the Dominican Republic. *Fitzgibbon*, 911 F.2d at 757. In another FOIA case Metro relies on, *Cotton v. Adams*, 798 F. Supp. 22 (D.D.C. 1992),⁵ the court addressed whether FOIA exempted the individuals named in investigative reports by the Office of the Inspector General regarding the acts of senior employees. *Cotton*, 798 F. Supp. at 25. And in *Harrison v. Exec. Office for U.S. Attorneys*, 377 F. Supp. 2d 141 (D.D.C. 2005)⁶, the court found that Exemption 7(C) prohibited disclosure of the names and identities of individuals of investigatory interest to the United States Attorney's Office (USAO) and those merely mentioned in USAO files as witnesses or informants. *Harrison*, 377 F. Supp. 2d at 148.

Another two cases cited by Metro—*Marsh v. Cty. of San Diego*, 680 F.3d 1148 (9th Cir. 2012) and *National Archives and Records Admin. v. Favish*, 541 U.S. 157 (2004)⁷—dealt with the privacy interests family members had in photographic images of dead relatives and are therefore inapplicable to the instant case.

None of these cases support Metro's argument that there is a nontrivial personal privacy interests in the names of individuals who witnessed or were

⁵ (*Id.*)

⁶ (*Id.*)

⁷ (RB/AB, p. 53.)

affected by the 1 October shooting. Accordingly, Metro cannot rely on the *Cameranesi* test to support the district court's decision to permit Metro to redact information that is not presumptively confidential.

C. THE REVIEW-JOURNAL PRESERVED ITS ARGUMENT REGARDING A PRIVILEGE LOG

Although the district court granted the Media Litigants' petitions, it failed to require Metro to produce a privilege log identifying the documents it was withholding and/or redacting. The district court's failure to order Metro to produce a privilege log is contrary to this Court's decision in *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882-83, 266 P.3d 623, 629 (2011), that a governmental entity withholding or redacting requested records is generally required to provide the requesting party with a log detailing the bases for each withholding or redaction.

Metro asserts the Review-Journal's request for a privilege log was limited to records withheld in their entirety and did not pertain to redactions. (RB/AB pp. 54-55.) Metro is correct that in its opening brief in district court, the Review-Journal initially only discussed withheld records. (1AA143.) However, the Review-Journal expanded its request to include redactions in subsequent filings with the district court. In its Reply in Support of the Amended Petition, the Review-Journal asserted Metro should be required to produce a privilege log not just of withheld documents, but also redacted documents. (*See* 2AA247 ("Pursuant to the NPRA, a governmental entity bears the burden of proving by a preponderance of the evidence that *each*

public record or a part thereof is confidential.”) (emphases in original).)

In addressing Metro’s refusal to disclose 911 calls, logs, and slips (2AA249-51), the Review-Journal reiterated its assertion that Metro “should have redacted records as necessary, and should have explained in a privilege log what it was redacting and why.” (2AA251.) At the February 7, 2018, hearing, the Review-Journal again asserted that Metro should be required to provide a privilege log of redacted and withheld documents to meet its burden of demonstrating that the withheld and/or redacted records were confidential:

Courts have made clear that hypothetical claims of -- hypothetical claims of harm are not sufficient to outweigh the presumption or meet the legal test. Indeed, they have to show that each document or the part thereof that they’re trying to protect is confidential and why. We had asked them to produce a log. They refused to do so.

(5AA875.) Thus, the Review-Journal has not waived its right to challenge the district court’s decision allowing Metro to avoid producing a privilege log detailing redactions.

D. THE DISTRICT COURT ERRED IN FAILING TO CONDUCT AN EVIDENTIARY HEARING BEFORE DETERMINING WHETHER METRO WAS ENTITLED TO ANY COSTS.

1. The Review-Journal Did Not Waive Its Right to An Evidentiary Hearing on Whether Metro Is Entitled to Fees for Pre-Copy Preparations of Dispatch Logs.

In its Costs Order, the district court directed that Metro could charge the Media Litigants pre-copy preparation fees for producing a dispatch log.

(7AA001329; 7AA001330.) In making this determination, the district court held the dispatch logs requested by the Media Litigants are “geographic information systems” (“GIS”) as defined by NRS 239.054. (7AA1329.) Although Metro’s computer-aided dispatch (“CAD”) system likely fits within NRS 239.054’s definition of a “geographic information system,” the Review-Journal did not request a copy of the CAD system; it only requested print-outs of dispatch logs. Accordingly, the district court erred in making this holding.

As Metro observes, the Review-Journal specifically stated an evidentiary hearing was necessary to determine whether Metro could charge pre-copy preparation fees to produce print-outs of dispatch logs. (RB/AB, p. 58 (citing 7AA1373).) Thus, this issue was sufficiently preserved for appeal.

2. Nevada Law Permits District Courts to Conduct an Evidentiary Hearing in Mandamus Proceedings.

As discussed in the Review-Journal’s AB/OB, the district court erred in failing to conduct an evidentiary hearing on an area of significant factual dispute: whether Metro presented sufficient facts and evidence to support its request for hundreds of thousands of dollars to produce responsive records in this case.

Metro asserts that “nothing in the NPRA requires a court to hold an evidentiary hearing to determine the fees a government entity may charge in relation to the production of public records.” (RB/AB, p. 59.) While that may be the case, Metro’s conclusion that the Review-Journal is not entitled to an evidentiary hearing

on costs ignores that a court may conduct a trial or evidentiary hearing in a proceeding for a writ of mandamus to determine disputed factual issues.

A petition for a writ of mandamus is the “appropriate procedural vehicle” for seeking access to withheld records. *Gibbons*, 127 Nev. at 884, 266 P.3d at 630 (citing *DR Partners v. Bd. of County Comm’rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000)). Here, the Review-Journal sought judicial intervention in this public records dispute via a petition for writ of mandamus. (See 1AA29-36; 1AA88-99.) Petitions for writs of mandamus are governed by NRS 34.150 *et seq.* NRS 34.220 provides that if “an answer [to a petition for writ of mandamus] is made, which raises a question as to [a] matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for a writ is based, the court may, in its discretion, order the question to be tried before a jury.”

The purpose of such a proceeding is to decide disputed factual issues which are “critical in demonstrating the propriety of a writ of mandamus.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). Here, there are still several issues of disputed fact regarding the actual costs Metro would incur in producing the records. This is because Metro has never provided evidence of its actual costs. Metro asserts it has provided such evidence, citing again to its supplemental brief on costs, and citing a self-serving declaration from one of its

employees regarding the production of BWC footage. (RB/AB, p. 59.)

The supplemental brief did not present evidence of actual costs; it presented Metro's arguments about the costs it believed it was entitled to charge. As this court has observed, "[a]rguments of counsel are not evidence and do not establish the facts of the case." *Jain v. McFarland*, 109 Nev. 465, 475–76, 851 P.2d 450, 457 (1993). Thus, Metro's counsel's arguments in the supplemental brief do not establish the actual costs Metro would incur. Likewise, the declaration of Metro's employee regarding estimated costs does not constitute evidence of costs. *Cf. Nigro v. Sears, Roebuck & Co.*, 784 F.3d 495, 497 (9th Cir. 2015) ("[A] self-serving declaration does not always create a genuine issue of material fact for summary judgment: The district court can disregard a self-serving declaration that states only conclusions and not facts that would be admissible evidence"). Thus, there are still questions of fact regarding the actual costs of production that require development.

E. THE DISTRICT COURT ERRED IN HOLDING A DISPATCH LOG IS A "GEOGRAPHIC INFORMATION SERVICE" UNDER NRS 239.054.

In its first records request submitted to Metro on October 2, 2017, the Review-Journal asked Metro to produce, *inter alia*, dispatch logs reflecting calls for service on the evening of the 1 October shooting. (1AA101.) In its Costs Order the district court directed that Metro could charge the Media Litigants pre-copy preparation fees for producing a dispatch log. (7AA001329; 7AA001330.) In making this

determination, the district court held the dispatch logs requested by the Media Litigants are “geographic information systems” as defined by NRS 239.054. (7AA001329.)

This was error. Metro asserts that the production of dispatch logs “falls squarely within the purview of NRS 239.054.” (RB/AB, p. 57.) The plain language of the statute indicates otherwise. Under NRS 239.054, a governmental entity may only charge requesters a fee for the provision of “information” from a geographic information service. NRS 239.054(1)(a)-(f) further provides that a governmental entity may charge reasonable costs related to the gathering and entry of data into a GIS; maintenance and updating of the database of the GIS, hardware, software, quality control, and consultation with personnel. Thus, NRS 239.054 is intended to allow governmental entities to request fees from a requester for providing electronic services and products—not printed material such as a dispatch log.

III. CONCLUSION

Although in large part the district court correctly interpreted and applied the NPRA, it nevertheless committed several errors that mandate correction by this Court. The Review-Journal respectfully requests that this Court find (1) the district court erred in holding that Metro did not waive its ability to assert any confidentiality privileges when Metro failed to comply with NRS 239.0107(1)(d); (2) the permissible redactions outlined in the March 2, 2018, Disclosure Order are

overbroad and unclear; (3) the district court abused its discretion by not requiring Metro to provide a privilege log to justify its redactions and withheld records; (4) the district court erred in holding that Metro was entitled to recoup costs associated with production of the records without first holding an evidentiary hearing; and (5) the district court erred in holding that a dispatch log is a “geographic information service” as defined by NRS 239.054 because the statute is intended to allow governmental entities to request fees from a requester for providing electronic services and products—not printed material such as a dispatch log.

DATED this 25th day of April, 2019.

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CERTIFICATE OF COMPLIANCE

Pursuant to Nev. R. App. P. 28.2:

I hereby certify that this brief complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5) and the type style requirements of Nev. R. App. P. 32(a)(6) because the RESPONDENT/CROSS-APPELLANT LAS VEGAS REVIEW-JOURNAL'S REPLY BRIEF ON CROSS-APPEAL has been prepared in a proportionally spaced typeface (14 point Times New Roman font).

I further certify that this RESPONDENT/CROSS-APPELLANT LAS VEGAS REVIEW-JOURNAL'S REPLY BRIEF ON CROSS-APPEAL complies with the type-volume limitation of Nev. R. App. P. 28.1(e)(2)(B)(i) because it contains 4,573 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENT/CROSS-APPELLANT LAS VEGAS REVIEW-JOURNAL'S REPLY BRIEF ON CROSS-APPEAL was filed electronically with the Nevada Supreme Court on the 25th day of April, 2019. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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